Supreme Court, U.S.
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Supreme Court of the United States

K.B.; K.B.; J.B.; L.B.; B.B.; S.B.; D.B.; J.C.; A.D.; S.J.; C.N.; and V.N., by their parents and next friends, Pamela L. Bickford; Christine A. Boggs; Posie M. R. Boggs; Debra L. Bolles; Karen L. Clester; Elizabeth A. Dunagan; Alice C. Jordan; Delisa Newstrom,

Petitioners,

v.

Anchorage School District Board Of Education; Bob Christal, Superintendent of the Anchorage School District; , Alaska State Board of Education; and Shirley J. Holloway, Commissioner of Education.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT No 99-35730

PETITION FOR WRIT OF CERTIORARI

Pamela L. Bickford
16840 Tide View Drive
Anchorage, Alaska 99516
(907) 345-7731

Christine A. Boggs
19200 Kullberg Drive
Chugiak, Alaska 99567
(907) 688-2462

Posie M.R. Boggs
6223 Geronimo Circle
Anchorage, Alaska 99504
(907) 337-3139

Debra L. Bolles
650 West 91st Avenue
Anchorage, Alaska 99515
(907) 349-5370

Karen L. Clester
3890 Amber Bay Loop
Anchorage, Alaska 99515
(907) 344-3378

Elizabeth A. Dunagan
1423 Early View Drive
Anchorage, Alaska 99504
(907) 333-1676

Alice C. Jordan
1200 West Dimond, # 813
Anchorage, Alaska 99515
(907) 344-3601

Delisa Newstrom
440 Mellow Place
Anchorage Alaska 99508
(907) 333-7501

64pp

QUESTIONS PRESENTED

Did the Ninth Circuit err in affirming the decision of a federal district court that held, without statutory or regulatory author ity in support thereof, contrary to the language, purpose, history, and structure of the Individuals with Disabilities Education Act (IDEA), contrary to the Congressional intent to provide broad judicial review access to protect IDEA rights, and contrary to a general right of self-representation, that claimants must be represented by licensed counsel ?

Did the Ninth Circuit err in finding it lacked jurisdiction to consider the issue of dismissal due to lack of representation because the "successive" motion for reconsideration "which did not alter or amend the judgment" did not toll the time to file a notice of appeal" ?

Did the Ninth Circuit err in affirming district court's imposition of required representation, thereby challenging the constitutionality and enforceability of the IDEA (28 U.S.C. § 2403(a)) ?

PARTIES TO THE PROCEEDING

The petitioners are:
Pamela L. Bickford; Christine A. Boggs; Posie M. R. Boggs; Debra L. Bolles; Karen L. Clester; Elizabeth A. Dunagan; Alice C. Jordan; Delisa Newstrom , and their children, K.B.; K.B.; J.B.; L.B.; B.B.; S.B.; D.B.; J.C.; A.D.; S.J.; C.N.; and V.N.

The respondents are:
The Anchorage School District Board Of Education; Bob Christal, Superintendent of the Anchorage School District; The Alaska State Boa rd Of Education; and Shirley J. Holloway, Commissioner of Education.

Rule 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners are not aware of a parent or publicly held corporate entity requiring a disclosure statement.

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PETITION FOR A WRIT OF CERTIORARI

Pamela L. Bickford; Christine A. Boggs; Posie M.R. Boggs; Debra L. Bolles; Karen L. Clester; Elizabeth A. Dunagan; Alice C. Jordan; and Delisa Newstrom, on behalf of themselves as parents, and on behalf of their children, K.B.; K.B.; J.B.; L.B.; B.B.; S.B.; D.B.; J.C.; A.D.; S.J.; C.N.; and V.N., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App.A. 1a-2a)[1] and denial of rehearing and rehearing en banc (App. L. 23a) are unreported. The order of the district court for the district of Alaska dismissing the complaint (App. B. 3a-5a), decision of dismissal (App. C. 6a), order granting reconsideration (App. D. 7a-8a), second order of dismissal when counsel did not appear (App. E. 9a-11a), order denying further reconsideration and statement the court intended to independently "follow up" on plaintiff's experience with the Disability Law Center (App. G. 13a-14a), and district court's final order denying plaintiff's request to stay dismissal until Disability Law Center had an opportunity to consider this case for representation (App. J. 19a), are unreported. Petitioners include written correspondence to Ms. Bickford from the Disability Law Center (App. F. 12a), to the Disability Law Center from Judge Holland (App. H. 15a-16a), and response to Judge Holland's letter requesting reconsideration of their denial of representation from Rick Tessandore of the Disability Law Center

[1] "App." refers to the appendix to this petition.

(App. I. 17a-18a), as petitioners believed the discourse between the court and the Disability Law Center warrants a careful review and is essential to the understanding of the successive pro se motions for reconsideration in plaintiffs' attempts to save the class action status of this case. The administrative response from the State of Alaska, Department of Education (App. K. 20a-22a), returning plaintiffs' October 9, 1998 complaint is the only written or oral correspondence from the State educational agency regarding the complaint and was entered as an exhibit in this case[2] and referenced in the December 17, 1998 complaint filed in federal district court.

STATEMENT OF THE BASIS FOR JURISDICTION

The judgment of the court of appeals (App.A. 1a-2a) was entered on February 17, 2000. A petition for panel rehearing and rehearing en banc was denied on April 5, 2000 (App. L. 23a). Petitioners Petition for a Writ of Certiorari is timely filed if filed within ninety days of the Ninth Circuit's denial of the Petition for Rehearing. That period of time expires July 4, 2000. The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

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[2] The State of Alaska, Department of Law's refusal to accept the October 9, 1998 complaint due to "procedural problems" (App.K.17a-20a) and failure to respond to complainants correspondence was the subject of a second complaint to the State educational agency, filed in May of 1999. The case is on appeal to the Superior Court for the State of Alaska, Third Judicial District at Anchorage, Case No. 3AN-99-3470 CI.

STATUTORY, REGULATORY, AND CONSTITUTIONAL PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. seq., and Section 35 of the Judiciary Act of 1789, 28 U.S.C. § 1654, are set forth in the appendix to this petition. App. M. 24a.

STATEMENT OF THE CASE

The Individuals with Disabilities Education Act, 20 U.S.C. §1400, *et seq*. ("IDEA"), expressly places parents in charge of their child's right to an appropriate education, and provides statutory procedures for parents to advance their claims against a public agency and a regulatory procedure to correct any alleged violation of Part B by any public agency, including violations that are systemic in nature.

This case involves an appeal of claims asserted by eight non-lawyer parents, on behalf of their own interests and on behalf of their children's interests, arising under the Individuals with Disabilities Education Act, 20 U.S.C. §1400, et seq., ("IDEA"), Section 504 of the Rehabilitation Act, 29 U.S.C. §794, ("Section 504"), the Americans with Disabilities Act, 42 U.S.C. §12101, et seq., ("ADA"), the Fourteenth Amendment to the U.S. Constitution, and Section 1983 of the Civil Rights Acts, 42 U.S.C. §1983. All issues are related to the validity of the educational assessments administered by the Anchorage School District for students referred to determine eligibility criteria to be considered for special education services in accordance with an individualized education plan.

See 20 U.S.C. § 1414(b)(3); 1401(11); 34 CFR §§300.530-300.534, §§300.540-300.543 and §300.340. Petitioners also asserted claims that the State educational agency, the State of Alaska, Department of Education, in addition to its supervisory authority, failed in its duty to ensure that the local education agency established and implemented procedures that meet specific federal and state requirements to provide protection in evaluation procedures. 20 U.S.C. §§ 1412(a)(7): 1412(a)(11); and 34 CFR §300.530.

The Alaska State Department of Education, was provided notice published on December 29, 1977, Federal Register pages 65082-83, to adopt appropriate evaluation procedures for assessment of students suspected of having a specific learning disability and to ensure that each public agency establish and implement procedures that meet the requirements of 34 CFR §§300.530-300.534 and evaluation criteria for determining the existence of a specific learning disability, 34 CFR §§300.540-300.543.

For example: If it is necessary to evaluate achievement in reading two areas are identified, Reading Comprehension and Basic Reading Skills. See CFR §300.541(a)(2)(v). Reading Comprehension, according to the selection chart on page 12 of every examiner's manual, ER. 145, if the test is to be administered as it was designed in accordance with 34 CFR §300.532, two subtests are to be administered, Passage Comprehension and Reading Vocabulary. To evaluate Basic Reading Skills, §300.541(a)(2)(iv), two subtests are to be administered, Letter-Word Identification and Word Attack. To properly evaluate the general area of Reading, four subtests are required: Passage Comprehension, Reading Vocabulary, Letter-Word Identification and Word Attack. Complaint, ER. 23, ¶ 80.

School records for children of various ages and attending schools district-wide indicate that several subtests are not administered in the determination of eligibility or development of an individualized education plan. ER. 156 for school attendance information and ER. 157-176. Under the general area of Reading, subtests Word Attack and Reading Vocabulary, are never found. "Word Attack" measures "the subject's skill in applying phonic and structural analysis skills to the pronunciation of unfamiliar printed words." ER.148. "Reading Vocabulary" measures "the subject's skill in reading words and supplying the appropriate meaning." ER. 148.

The publisher of the test has no authority to correct erroneous school district evaluation practices once the school district purchases the test and the court should provide injunctive relief to protect the interest of the minor children involved. Complai nt, ¶¶ 99-104, ER. 27. Parents allege the omitted subtests are critical to the proper evaluation of a child who is referred for special education services in need of remediation in the area of Reading when the child has particular achievement deficits in decoding words and/or vocabulary development.

Parents claim that if required sub-tests are not administered, the test is invalid, educational plans based on an invalid assessment may not address a student's individualized educational needs or provide proper educational placement, and, thus a diagnostic failure may ultimately fail to provide the student his right to an appropriate educational opportunity. Id., ER. 33-35, ¶¶ 130-144.

This case commenced when an informal group of parents brought this matter to the attention of the Anchorage School District School Board at the first two board meeting of the '98-'99 school year on August 10 and August 24, 1998. Complaint, ¶ 82-84, ER. 24. In response to parents concerns, the school district submitted a letter requesting review of their evaluation procedures to the State educational agency on September 10, 1998. Id. ER. 25, ¶ 87. Parents, concerned that the review request lacked specificity and would not stay their "discovery" statute of limitations under Section 504, filed a formal written complaint with the State educational agency on October 9, 1998. ER. 200. The complaint was titled "Complaint and Request for Due Process Hearing" to afford the State agency an unqualified opportunity to address their concerns under 34 CFR §§ 300.660-300.662 and 34 CFR §§ 300.506-300.512. The complaint identified both the District and the State as defendants. On November 17, the complaint was returned by letter from Thomas H. Dahl, Assistant Attorney General. ER. 26, ¶ 95-99 (App. K. 20a-22a).

Petitioners then filed a complaint in federal district court on December 18, 1998, ER. 1-43, and filed a verification of the complaint and motion to certify the class on January 25, 1999. ER. 44-58. Defendants, District and State, moved for dismissal. On February 3, Judge Holland ordered denial of class certification, ER. 59-61, and dismissed the complaint, ER. 62-64(App. B. 3a-5a), as the question of representation had "been authoritatively answered for the Ninth Circuit by the recent case, *Johns v. County of San Diego* , 114 F.3d 874 (9th Cir.1997)." On February 4, the district court dismissed the case. ER. 65 (App. C. 6a).

On February 10, 1999 Petitioners moved for reconsideration on three issues: (1) it was unfair to not allow time to secure counsel; (2) the court must determine if minor plaintiffs would suffer manifest injustice by dismissal and if finding injustice probable, the court had a duty to see that the interests of minor children were protected by appointment of counsel; and (3) the IDEA provides parent's rights and therefore parents were entitled to maintain action on their own behalf. ER. 66-82. District Court ordered a response from defendants, ER. 83, and on March 8, the court granted the motion and ordered Petitioners to secure counsel on or before May 5. ER. 84-86. (App. D. 7a-8a).

On May 5, Parents mailed three documents (filed May 10), a Notice of Failure to Retain Counsel and Motion to Appoint Counsel for Unrepresented Minor Children, a Motion to Appoint Natural Parents Legal Guardians of Their Minor Children, and a Motion for Preliminary Injunction. ER. 87-177. On May 14, district court denied all three motions and suggested plaintiffs contact the Disability Law Center. ER. 178-81. (App. E. 9a-11a). On May 25, Parents moved for reconsideration of the May 14 Order and attached a letter from the Disability Law Center denying representation. ER. 182-243. (App. F. 12a). On June 4, district court denied reconsideration stating "the court intends to independentl y follow up []on this situation." ER. 244-46. (App. G. 13a-14a).

The District Court then sent a letter to the Disability Law Center requesting they reconsider their denial of representation. (App.H. 15a-16a). Diability Law Center responded on June 10, 1999 informing Judge Holland the matter could not be addressed until the beginning of October. (App. I. 17a-18a). On June 14, Parents moved to stay the proceedings,

attaching correspondence between Judge Holland and Rick Tessandore, Director of the Disability Law Center that left the question of the availability of legal representation pending until October. ER. 247-255. On June 17, the district court issued its final order of denial. ER. 256-57. (App. J. 19a) Petitioners' notice of appeal was filed July 9, 1999. ER. 258-67.

The secretarial review, the appeal provision for State complaint procedures under the IDEA, was removed from the statute and regulations in accordance with the '97 IDEA amendments. This additional note is relevant to this issue because unless some other provision is added to the present IDEA, all complaints under the IDEA, whether originating with the State complaint procedures, a due process hearing, or, as in this case, a total denial of due process, may require judicial review. On January 25, 2000, The National Council on Disability published "Back to School on Civil Rights: Advancing the Federal Commitment to Leave No Child Behind." (http://www.ncd.gov) The letter of transmittal to President Clinton plainly states: "Overall, NCD finds that federal efforts to enforce the law over several Administrations have been inconsistent and ineffective. Despite the important efforts of your Administration to be more aggressive than any of its predecessors in addressing these compliance problems, failures to ensure local compliance with Part B requirements contintue to be widespread and persist over many years. *Enforcement of the law is too often the burden of parents who must invoke formal complaint procedures and request due process hearings to obtain the services and supports to which their children are entitled under law*." (emphasis added).

REASONS FOR GRANTING THE PETITION

Petitioners request this case be heard as the Ninth Circuit erred in affirming the decision of the district court that held, without statutory or regulatory authority in support thereof, and contrary to the language, purpose, and history of the Individuals with Disabilities Education Act (IDEA), to the Congressional intent to provide broad judicial review access to protect IDEA rights, and to a general right of self-representation, that claimants must be represented by licensed counsel or face dismissal.

1-a. The structure of the IDEA is threatened by the decision of the Ninth Circuit Court of Appeals affirming the conclusion of the district court that a minor child, whether suing in his own name or through his parents, must be represented by counsel, citing *Johns v. County of San Diego* , 114 F.3d 874 (9th Cir. 1997) and *Collinsgru v. Palmyra Board of Education* , 161 F.3d 225 (3d Cir. 1998). The language and structure of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq* ., and the Fourteenth Amendment to the United States Constitution, unambiguously authorize a parent to represent the interests of their minor child, as well as their own interests, without requiring representation by licensed counsel.

A parent who is a prevailing party in a due process hearing may be awarded attorney's fees and costs, indicating a preference for counsel, but the statute cannot be construed to imply representation by counsel is a requirement. 20 U.S.C. § 1415(i)(3).

The court's rationale does not directly state that a parent undertakes the unauthorized to practice law on behalf of another, as Assistant Attorney Dahl warns, referencing Alaska Statute 08.08.230, in his November 17, 1998 letter of rejection, App. K. 21a. Instead, the court framed the question from the perspective of the child as a third party, thus avoiding the issue of whether or not the parent can represent their own interest. This case concerns the authority of a parent of a child with disabilities to enforce an Act that provides equal access to educational opportunities and the due process of law as its core structure. The IDEA is structured to quickly resolve conflict that might arise in making decisions regarding a child's education. A parent's role, under IDEA, is to enforce the protections afforded by law, directly challenged in this case, and deserves this court's careful consideration.

In very plain language, the stated purposes of the IDEA are "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, to ensure that the rights of children with disabilities and parents of such children are protected; and "to assist States, localities, ... to provide for the education of all children with disabilities." See 20 U.S.C. §1400(d)(1). *See also Hendrick Hudson Dist. Bd. of Educ. v. Rowley* , 458 U.S. 176, 179 (1982). In addition, a separate purpose is "to assess, and ensure the effectiveness of, efforts to education children with disabilities." 20 U.S.C. § 1400(d)(4). Accordingly, Congress appropriated funds to assist in providing education for all children with disabilities, 20 U.S.C.1411, and based State and local educational

agency continued funding on their compliance with the requirements of Part B of the IDEA. 20 U.S.C. 1412-1413.

The heart of the IDEA system, however, are the procedural safeguards that any agency receiving assistance is required to establish and maintain to ensure "children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies. " 20 U.S.C. 1415(a). The required procedures include: an opportunity for the parent to examine all records relating to the child, to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child. §1415(b)(1). Should the parent not be available, procedures for a surrogate parent are provided. §1415(b)(2). Written prior notice must be given to the parents or guardian of the child whenever schools either propose to change or initiate, or refuse to change or initiate the identification, evaluation, placement, or provision of special educational services for the child." 20 U.S.C. §1415(b)(3). Parents must have an opportunity to present complaints about any matter identified in §1415(b)(1). 20 U.S.C. § 1415(b)(6). When complaints are received, "the parents or guardians shall have an opportunity for an impartial due process hearing," 20 U.S.C. § 1415(f), and if the "hearing ... is conducted by a local educational agency, any party aggrieved.." may appeal for an impartial review by a State educational agency. 20 U.S.C. 1415(g).

At due process hearings held under IDEA, any party "shall be accorded" the "right to be accompanied and advised by counsel..." 20 U.S.C. 1415(h)(1), "the right to present evidence and confront, cross-examine, and compell the attendance of witnesses" 1415(h)(2), the right to a verbatim record of the hearing 1415(h)(3), and "the right to written... or electronic findings of fact and decisions" 1415(h)(4). The IDEA then provides that "..any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil anction with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competen t jurisdicition or in a district court of the United States without regard to the amound in controversy." 1415(I)(2)(A). In any action brought under the IDEA, the court "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate. §1415(i)(2)(B). The IDEA specifies that the "district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy." §1415(i)(3).

The IDEA, prior to the '97 Amendments, simply acknowledge a relationship between parents and their children, without distinguish ing the rights of the parent from the rights of the child. However, Public Law 105-17, amended Section 615 by adding subsection (m) under which States may provide for the transfer of parental rights to the child once he reaches the age of majority. 111 Stat. 98-99; see also 1997 U.S.C.C.A. No. 5 (July 1997), at 122. This provision would make little sense unless parents had

substantive rights that could be transferred at the age of majority. This provision inexplicably was not considered in the Collinsgru decision, even though the statutory language was available prior to the date of the third circuit decision.

1 - b. The IDEA differs from most other federal or state law conferring rights in that Congress, recognizing the unusual interest and legal responsibility that parents have in ensuring their children's education, took great care to entrust the prosecution of children's rights under the IDEA to parents and gave them rights that could be asserted on behalf of their child. Thus, the fact that this Court and others have held that parents may not represent their children in advancing various kinds of tort claims does not mean that the right of pro se representation must be denied in an IDEA case. Congress thought that entrusting the child's rights to the parents' enforcement was, on balance, the best way to ensure the effectuation of the underlying policy of the statute. *See Hendrick Hudson Dist. Bd. Of Educ. v. Rowley* , 458 U.S. 176, 182 and n.6 207, 208-09 (1982).

IDEA cases are brought under a statute in which Congress both made the effectiveness of a child's access to free appropriate education dependent on the efforts of his parents, and entrusted that enforcement of these rights to the parents. In light of the special character of the IDEA, objections and denials of pro se representation in this case thus threaten to undermine the objectives of the IDEA and should therefore be rejected. The statute makes clear that the parents have a right to counsel but may proceed pro se in administrati ve proceedings and when filing complaints with the State educational agency. The

statute also makes clear that the parent is provided the right to appeal an adverse decision of the administrative agency to federal district court. Absent is the District Court's imposed condition, that the appeal can only proceed with representation by counsel.

Additionally, whether a parent has standing to assert claims is a matter resolved according to constitutional and prudential limitations restricting federal judicial authority, according to this Court's decision in *Lujan v. Defenders of Wildlife* , 504 U.S. 555. Creating a different barrier to establish standing, when a superior court has provided an appropriate test, should not be permitted by this Court.

The issue presented here, whether petitioners have standing to assert claims under the IDEA, or any other Act of Congress, is a threshold matter because putative plaintiffs lacking standing are not entitled to have their claims litigated in federal courts. *Warth v. Seldin* , 422 U.S. 490, 498, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975). The Supreme Court directs courts to resolve questions of standing according to a consideration of "both constitutional limitations of federal-court jurisdiction and prudential limitations in its exercise." *Gladstone Realtors v. Village of Bellwood* , 441 U.S. 91, 99, 99 S.Ct. 1601, 1607, 60 L.Ed.2d 66 (1979). In both dimensions – Article III and prudential – the test for standing "is founded in concern about the proper - and properly limited - role of the courts in a democratic society." Id.

Ordinarily, litigants seeking relief in federal court must satisfy constitutional and prudential limitations as federal judicial power is constitutionally restricted to "cases" or "controversies," U.S.C.A. Const. art 3, §1, et seq., *Flast v. Cohen* , 392 U.S. 83, 88 S.Ct. 1942, 20

L.Ed.2d 947 (1968), and to satisfy Article III, a plaintiff must allege: (1) an immediate threat of injury; (2) fairly traceable to the defendant's conduct; and that (3) a favorable federal court decision likely would redress or remedy. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-561, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992); *Valley Forge Christian College v. Americans United for Separation of Churc h and State, Inc.* 454 U.S. 464, 471-472, 102 S.Ct. 752, 757-58, 70 L.Ed.2d 700 (1982).

Generally, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties. *Department of Labor v. Tripplett* , 494 U.S. 715, 720, 110 S.Ct. 1428, 1431, 108 L.Ed.2d 701 (1990); *Singleton v. Wulff* , 428 U.S. 106, 96 S.Ct. 2868, 49 L.Ed.2d 82 (1976). However, this fundamental restriction on a federal courts authority has certain limi ted exceptions, a noted exception being, the right of a litigant to bring actions of behalf of third parties, provided three important criteria are satisfied: The litigant must have suffered an "injury in fact," that gives the litigant a "sufficiently concrete interest" in the outcome of the issue in dispute, *Singleton* , at 112; the litigant must have a close relationship to the third party, Id.; and there must exist some hindrance to the third party's ability to protect his or her own interests, Id, at 115-116.

Prudential requirement for standing do not apply to the IDEA. Unlike Article III barriers to suit, however, Congress may override the prudential limits on standing by statute. *Gladstone* , 441 U,S. at 100, 99 S.Ct. at 1608; *Warth* , 422 U.S. at 500-501, 95 S.Ct. at 2206 . As explained in *Warth* :

Essentially, the standing question in such cases is whether the constitutional or statutory provisions on which the claim rests properly can be understood

as granting persons in the plaintiff's position a right to judicial relief. In some circumstances, countervailing considerations may outweigh the concerns underlying the usual reluctance to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties . . .[S]o long as [Article III] is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others.....

Warth , 422 U.S. at 500-501, 95 S.Ct. at 2206. Petitioners submit they met *Lujan* , *Singleton* , and *Warth,* as the party invoking federal jurisdiction has the burden of establishing the constitutional elements of Article III standing.

(i) In this case, petitioners allege both the parent and the child suffer an "immediate threat of injury" each time an evaluation is administered that fails to meet the federal minimum requirements. The allegations point to a practice that goes beyond the first *Lujan* test of "an immediate threat of injury" as it can be demonstrated by the school records of each identified child that the deficiencies in the evaluations have happened, as continue to happen, until the District and State are directed to correct their actions and comply with the law. See ER. 134-177.

(ii) The nature and existence of the relationship between a parent and a child identified in this case, for the purposes of this inquiry, is an assumed fact. The U.S. Supreme Court has long recognized that parental choices about the upbringing and education of their children are among the fundamental liberty interest related to family life that are protected by the

Due Process Clause. *Meyer v. Nebraska* , 262 U.S. 390, 399 (1923); *Pierce v. Society of Sisters* , 268 U.S. 510, 534-35 (1925); *Farrington v. Tokishige* , 273 U.S.284, 298-99 (1927); *Cleveland Board of Education v. LaFleur* , 414 U.S. 632, 639-40 (1974); *Wisconsin v. Yoder* , 406 U.S. 205, 231-33 (1977); *Santosky v. Kramer* , 455 U.S. 745, 753 (1982); *M.L.B. v. S.L.J.*, 117 S.Ct. 555, 564 (1996). Courts have protected parental right because limitations upon a child's education have drastic consequences for the child's future and the child is unable to protect his or her own interests. A proper education prepares an individual to participate effectively and intelligently in our political system. *Wisconsin v. Yoder* , 406 U.S. 205, 221 (1972). It has also been recognized that education is necessary to prepare individuals to become self-reliant partici-pants in our economy. *Plyler v. Doe*, 457 U.S. 202, 221 (1982). Success in all aspects of life is reasonably doubtful if a child is deprived of a proper education. *Brown v. Board of Education* , 347 U.S. 483, 493 (1954). Deprivation of an appropriate education may signifi-cantly undermine a child's future. Timely, effective parental involvement in insuring an appropriate education for all children is, therefore, vital.

(iii) Black's defines "minor" as "[a]n infant or person who is under the age of legal competence." At the age of "majority" which Black's defines as "[f]ull age; legal age; age at which a person is no longer a minor" and "...by law, a person is capable of being legally responsible for all his or her acts, and is entitled to the management of his or her own affairs and to the enjoyment of civic rights."

Where a statute, in this case the IDEA, grants standing to the full limits of Article III, courts "lack authority to create prudential barriers to standing" in suits brought under that statute. *Havens Realty Corp. v. Coleman* , 455 U.S. 363, 372, 102 S.Ct. 1114, 1121, 71 L.Ed.2d 214 (1982). Congress removed the rational for invoking the usual prudential restraints on judicial review by implicitly granting standing under the IDEA to a broad group of third-party plaintiffs, including organizations or individuals, as such an entity meeting Article III minimum requirements can file a complaint with a State educational agency and trigger a complaint investigation. The provision of procedures, under 34 CFR §§300.660-300.662 and corresponding state regulations, that are accessible by "individuals" or "organizations" grant standing to even a non-profit corporation, that "need not run the gauntlet of prudential standing tests; satisfying Article III is enough." *Family & Children's Center v. School City,* 13 F.3d 1052 , 1061 (7thCir. 1994). If the prudential barriers on standing are lifted for a non-profit organization that can demonstrate Article III minima, petitioners maintain that the statutory purpose of safeguarding their children's right to a free appropriate public education would be frustrated if parents are barred from federal court in this case. Parents contend that the constitutional minimums stated in *Lujan* are met and the prudential requirements for standing under the IDEA, the only substantive challenge below, are satisfied in this case.

Additionally, to properly determine Article III standing the court must have considered the sufficiency of the allegations, *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 106 S.Ct. 1326, 89 L.Ed.2d 501 (1986). This inquiry did not occur, as the

district court determined representation by licensed counsel was the only issue.

To summarize, the language and purpose of the IDEA provide parents a right of action in federal court that satisfy the U.S. Supreme Court's three "irreducible constitutional minimum" requirements that must be established in order to demonstrate standing according to *Lujan* , and satisfies the requirements in *Singleton* , permitting parents to assert claims for relief on behalf of their minor children, as stated in *Warth.* The prudential barrier raised by defendants and district court below does not apply to this IDEA case and should be lifted.

1 -c. The history of the IDEA and 28 U.S.C. §1654 entitle parents to represent their own person, and assert the right as parties under Section 35 of the Judiciary Act of 1789, 28 U.S.C. § 1654, to "plead and conduct their own cases personally." The right of self-representation under Section 1654 is a personal one, in that a party is only entitled to conduct his "own case." Only natural persons may assert this right, *Rowland v. California Men's Colony* , 506 U.S. 194, 202 (1993), and a party may generally not be represented by another person who is not a lawyer. *Lindstrom v. State of Illinoi s,* 632 F.Supp. 1535, 1537 (N.D. Ill. 1986), app. dism., 828 F.2d 21 (7th Cir. 1987). Whether Petitioners are entitled to maintain all the claims in this case pro se depends on whether, under 28 U.S.C. §1654, the claims represent "their own case."

Because this case, unlike *Johns* , involves the proper education to be afforded to the children of the identified Parents under the IDEA, it is indeed their "own case." Both constitutionally and as a matter of Alaska law, parents are responsible for their child's

education; they are entitled (and legally obligated) to make the fundamental decisions about how the child is to be educated. They are, in effect, the "real parties in interest" in this case according to Black's:

> "Person who will be entitled to benefits of actions if successful, that is, the one who is actually and substantially interested in subject matter as distinguished form one who has only a nominal, formal, or technical interest in or connection with it. Under the traditional test, a party is a "real party in interest" if it has the legal right under the applicable substantive law to enforce the claim in question. *Real party in interest* within rule that every civil action in federal courts must be prosecuted in name of real party in interest *is the one, who, under applicable substantive law, has legal right to bring suit; and not necessarily person who will ultimately benefit from the recovery.*

Black's Law Dictionary, Abridged 6th Ed., (West 1991) (Emphasis added.) Petitioners submit the question of who is the "real party in interest" is affirmatively answered twice - petitioners are parents of children with disabilities protected by Acts of Congress, and petitioners are aggrieved complainants seeking appropriate judicial relief. Therefore, petitioners are the real party in interest, and their minor child a beneficiary, until the child becomes an adult.

2. The Ninth Circuit erred in finding it lacked jurisdiction to consider the issue of dismissal due to lack of representation because the "successive" motion for reconsideration "which did not alter or

amend the judgment" did not toll the time to file a notice of appeal."

Petitioners did not waste time, as this petition sets out above, pages 6 through 8, as post-dismissal motions regarding plaintiffs efforts to obtain counsel and Judge Holland's intervention on behalf of the class, to secure potential representation by the Disability Law Center demonstrate a sincere and hearty effort to address the problem. Petitioners did not passively let the time pass and then complain they wern't tardy. Instead, representation prospects evolved and created justifiable confusion as to when the notice of appeal would be considered untimely.

Judge Holland's concern and advocacy in this regard has not been criticized and will not be here. However, petitioners now face an even greater hurdle, their complaint may never be heard as the statute of limitations has expired. The State educational agency and the Anchorge School District may never have to answer these children and their parents, due to their parents hopes that the judge would persuade the protection and advocacy agency to represent the unrepresented class. Judge Holland had a sense of the complexity of the caselaw specific to special education, needed expert counsel for this case, and plainly requested same from the Disability Law Center. If their answer had been affirmative, the Judge's efforts would have been successful. If their answer had been negative, the notice of appeal would have been submitted. However, a "let's wait and see" until October answer warranted a stay of dismissal and the request, although not granted, was on topic and should have tolled the notice of appeal. Appellate jurisdiction is not limited to the final order. A "final decision" generally is one which ends

the litigation on the merits and leaves nothing for the court to do but execute the judgment. *Catlin v. United States*, 324 U.S. 229, 233, 65 S.Ct. 631, 89 L.Ed. 911 (1945). The Ninth Circuit erred in finding the motions relating to represention did not toll the notice of appeal.

3. Petitioners submit to this court that other potential unintended consequences will result if the Ninth Circuit's error in affirming district court's imposition of required representatio n is not reversed - the constitutionality and enforceability of the IDEA must be considered in this question, 28 U.S.C. § 2403(a).

Aside from procedural questions regarding which parties, plaintiff or defendant, pre-vailing or non-prevailing, and on which issues - a dispute about a comment in an educational record or placement in an out-of-state residential hospital, and under what circumstances will reimbursement be awarded - more basic questions arise. Is it fundamentally unfair to pit a private attorney, limited to the resources of a parent, against publicly funded attorneys with virtually unlimited resources? Consider the position a school district administration would assum e under those circumstances. Further, issues resolved in 1982 at a single administrative hearing now require weeks of the court's time to resolve. In light of the National Council on Disability's report, the news is not good for students with disabilities that are entit led to an appropriate education. The district court has held, and the Ninth Circuit has affirmed, that petitioners must retain counsel to access federal district court - the court of subject matter jurisdiction under the IDEA - a more important issue arises: What will be the long-term effect of the imposition of counsel?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Pamela L. Bickford
Christine A. Boggs
Posie M. R. Boggs
Debra L. Bolles
Karen L. Clester
Elizabeth A. Dunagan
Alice C. Jordan
Delisa Newstrom

Appendix A
NOT FOR PUBLICATION

UNITED STATE COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 99-35730
D.C. No. CV-98-00408-HRH

PAMELA L. BICKFORD; CHIRISTINE A. BOGGS; POSIE M.R. BOGGS; DEBRA L. BOLLES; KAREN L. CLESTER; ELIZABETH A. DUNAGAN; ALICE C. JORDAN; DELISA NEWSTROM,
Plaintiffs-Appellants,
and
K.B.; K.B.; J.B.; L.B.; B.B.; S.B.; D.B.; J.C.; A.D.; S.J.; C.N.; V.N.,
Plaintiffs,
v.
ANCHORAGE SCHOOL DISTRICT BOARD OF EDUCATION; BOB CHRISTAL; ALASKA STATE BOARD OF EDUCATION; SHIRLEY J. HOLLOWAY,
Defendants-Appellees.

MEMORANDUM[1]

[Filed February 17, 2000]

Appeal from the United States District Court
for the District of Alaska
H. Russel Holland, District Judge, Presiding

Submitted February 8, 2000[2]

Before: GOODWIN, LEAVY, and TASHIMA,
Circuit Judges.

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[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellants, parents with children in the Anchorage school district, appeal pro se from the district court's order denying their motion for reconsideration. We have jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

The thirty-day period to file a notice of appeal began to run when the district court filed its May 14, 1999 order denying appellants' May 10, 1999 motion for appointment of counsel. Appellants' June 14, 1999 motion for reconsideration is a successive motion for reconsideration of an order that did not alter or amend the judgment in the case which did not toll the time to file a notice of appeal. See *Wages v. IRS*, 914 F.2d 1230, 1234 n. 3 (9th Cir. 1990). Accordingly, we have jurisdiction to consider only the district court's June 17, 1999 order. *See* Fed. R. App. P. 4.

Insofar as appellants' request for clarification preserved this issue for appeal, we conclude the district court did not err by dismissing minor plaintiffs' claims where the parents were proceeding pro se. *See Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997).

We also conclude that the district court did not abuse its discretion by denying appellants' motion to stay the entry of judgment dismissing the case without prejudice. *See MacKillop v. Lowe's Market, Inc.*, 58 F.3d 1441, 1446 (9th Cir. 1995).

We decline to address appellants' remaining claims on appeal because they are beyond the scope of the issues raised in their June 14, 1999 motion.

We deny in part appellees' motion to dismiss the appeal for lack of jurisdiction. We deny appellants' motion for an extension of time to file their optional reply brief. AFFIRMED.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A98-0408-CV(HRH)

K.B., et al.,

Plaintiffs,

vs.

ANCHORAGE SCHOOL DISTRICT, et al.,

Defendants.

[Filed February 3, 1999]

ORDER
Motion to Dismiss

Each of defendants Anchorage School District and the state defendants have moved to dismiss plaintiffs' complaint.[1] The motions are opposed. Oral argument has not been requested and is not deemed necessary.

In this case, the plaintiffs seek declaratory and injunctive relief, as well as compensatory and punitive damages, based upon their contentions that the defendants have violated various federal laws with respect to the minor plaintiffs' rights as disabled persons to a free, appropriate, public education. The plaintiffs' original complaint was signed by plaintiff Pamela Bickford only. Subsequently, after this motion practice got underway, the plaintiffs filed a "verification of complaint"[2] by which the court understands that each of the adult plaintiffs has adopted and verified the originally filed complaint. The court also understands (largely upon inference from the moving papers) that none of the adult

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1 Clerk's Docket Nos. 8 & 10.

2 Clerk's Docket No. 16.

plaintiffs is an attorney admitted to the Alaska Bar Association or any other bar association.

The issue of substance raised by these motions and which is dispositive of them is: May the adult parents of disabled children proceed with their pro se complaint against the defendants?

Before proceeding with this question, we need to address briefly some matters which are either unimportant at this time or non-dispositive. The court is not here concerned with procedural logistics, such as how will the plaintiffs' collective papers be managed or circulated. The court is not here concerned with the question of whether the plaintiffs are or are not being assisted by counsel who has not seen fit to appear formally for them. The court is not here concerned with the question of whether there is or is not a need for each adult to be formally designated as a guardian ad litem for a disabled child plaintiff. In the latter regard, the court assumes that if not controlled by the statute,[3] the adults could be appointed guardians ad litem and could, under Rule 17(a), Federal Rules of Civil Procedure, sue for their children's benefit.

The minor, disabled plaintiffs are entitled to a free, appropriate, public education under federal law. They - or their parents as guardians ad litem - have a cause of action to enforce those rights. Again, the question before us is: Must the children, whether suing in their own names or through their parents as guardians ad litem, be represented by counsel?

That question has been authoritatively answered for the Ninth Circuit by the recent case, *Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997). The court in *Johns*, after acknowledging the general proposition that

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[3] *See* 20 U.S.C. § 1415 and *Collinsgru v. Palmyra Bd. of Educ.*, 161 F. 3d 225, 233-237 (3d Cir. 1998).

a non-lawyer has no authority to appear as attorney for anyone but himself, holds:

> The issue of whether a parent can bring a pro se lawsuit on behalf of a minor 'falls squarely within the ambit of the principles that militate against allowing non-lawyers to represent others in court.' *Brown v. Ortho Diagnostic Sys., Inc.*, 868 F. Supp. 168, 172 (E.D. Va. 1994). Accordingly, we hold that a parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer.

Johns, 114 F.3d at 877; *accord, Collinsgru v. Palmyra Bd. of Educ.*, 161 F.3d 225, 233-237 (3d Cir. 1998) (holding that the IDEA does not create joint rights in parents of disabled children).

The plaintiffs' complaint is dismissed without prejudice.

DATED at Anchorage, Alaska, this 3 day of February, 1999.

(s/ _____)
H. Russel Holland, Judge
District of Alaska

(Clerk's Service Stamp)

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

K.B., ET AL,
Plaintiff, Case Number A98-0408CV

v.

ANCHORAGE SCHOOL DISTRICT ET AL,
Defendant.

JUDGMENT IN A CIVIL CASE

____ **JERY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

__X__ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:
THAT plaintiffs' complaint is dismissed without prejudice.

APPROVED:
(s/_____)
H. Russel Holland
United States District Judge
(Dated) February 4, 1999

Michael D. Hall
Clerk

(s) Helen Gill
(by) Deputy Clerk

Appendix D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A98-0408-CV(HRH)

K.B., et al.,

Plaintiffs,

vs.

ANCHORAGE SCHOOL DISTRICT, et al.,

Defendants.

[Filed March 8, 1999]

ORDER

Case Status

By order filed February 3, 1999, [1] plaintiffs' complaint was dismissed without prejudice. Judgment was entered dismissing the complaint without prejudice.[2]

Plaintiffs moved for reconsideration of both the foregoing order of dismissal as well as the court's separate order denying plaintiffs' motion for class certification. [3] The court has solicited and received input from defendants with respect to reconsideration, and neither opposes reconsideration for purposes of permitting plaintiffs to secure the appearance of counsel to represent them on the matter they would raise in this court.

In taking the foregoing position, defendant State of Alaska expresses concern that the vacating of the court's order of dismissal might have some substantive effect; and, in particular the State expresses concern about its motion with respect to exhaustion of administrative remedies which, the State suggests, is

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1 Clerk's Docket No. 20.

2 Clerk's Docket No. 21.

3 Clerk's Docket No. 19.

still pending. It is the court's view that the State's motion was mooted and in substance denied by the dismissal and judgment.

It is the court's intent to take no action with respect to any of its orders or the judgment entered in this case unless and until it is in receipt of an appearance of counsel for the plaintiffs, coupled with counsel's motion to set aside the court's judgment and order on motion to dismiss. In light of the position which defendants have taken, it is the court's intention to summarily grant a motion to set aside both its judgment and the order on motion to dismiss if requested to do so by counsel on behalf of the plaintiffs. The reason for taking this approach is twofold. First, the court dismissed the plaintiffs' complaint because the minor plaintiffs' parents could not legally represent their children on a pro se basis. The appearance of counsel will cure that problem. Second, it might be that when and if plaintiffs secure counsel, he or she will either elect to simply start all over again with a new complaint and a new file; or (and this is suggested by the State's concerns) counsel may determine that the plaintiffs' complaints are not yet ripe for litigation.

Plaintiffs' motion for reconsideration is granted. If moved to do so by counsel for the plaintiffs on or before May 5, 1999, the court will set aside its judgment and order of February 3, 1999, thereby reinstating plaintiffs' complaint. If plaintiffs' complaint is thusly reinstated, the court urges counsel to immediately arrange a status conference with the court (telephonic participation permitted) to the end that court and counsel may, at a very early date, institute a preliminary case development plan. DATED at Anchorage, Alaska, this 5 day of March, 1999.

(s/_____)
H. Russel Holland, Judge
District of Alaska

(Clerk's Service Stamp)

Appendix E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A98-0408-CV(HRH)

K.B., et al.,

Plaintiffs,

vs.

ANCHORAGE SCHOOL DISTRICT, et al.,

Defendants.

[Filed May 14 1999]

ORDER
Case Status

By order filed February 3, 1999,[1] the court granted the defendants' motion to dismiss plaintiffs' complaint herein. The focal point of that order was the issue: "Must the children, whether suing in their own manes or through their parents as guardians *ad litem,* be represented by counsel?"[2] The court concluded, on the authority of *Johns v. County of San Diego, 114* F.3d 874 (9th Cir.1997), that the answer to this question was yes.

The court dismissed plaintiffs' complaint without prejudice, and thereafter, on motion for reconsideration, directed that:

> If moved to do so by counsel for the plaintiffs on or before May 5, 1999, the court will set aside its judgment and order of February 3, 1999, thereby reinstating plaintiffs' complaint.[3]

The court received no response from the plaintiffs until May 10, 1999, on which date they filed a notice of failure to retain counsel and motion for appointment of

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1 Clerk's Docket No. 20.

2 Id. at 3.

3 Order at 2 -3 (Mar. 8, 1999), Clerk's Docket No. 26.

counsel for unrepresented minor children.[4] Filed simultaneously was a *pro se* motion to appoint parents as legal guardians[5] and a *pro se* motion for preliminary injunction.[6]

The motion for preliminary injunction is denied because, as of this date, plaintiffs' complaint has been dismissed. For the same reason, the motion to appoint natural parents as legal guardians for their minor children is denied. None of the foregoing papers have been presented by counsel for the plaintiff children or their parents on behalf of their children. The condition for reinstating plaintiffs' complaint has not been met.

Finally, plaintiffs move for the court to appoint counsel for the unrepresented minor children. The motion cites no authority by which the court can make such appointment(s), and the court is aware of no such authority. The court has a *pro bono* program under which counsel may sometimes be designated for persons of limited financial means. From earlier proceedings, the court is of the impression that the parents (who are responsible for the needs of their children) would not meet the income constraints of this program. The court has no budgeted funds with which it can assist litigants with civil litigation.

For the foregoing reasons, the motion for appointment of counsel is denied.

While all of the foregoing was developing, the court, in connection with other litigation, became aware of the Disability Law Center of Alaska[7] which has represented itself to the court to be:

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[4] Clerk's Docket No. 27.

[5] Clerk's Docket No. 28.

[6] Clerk's Docket No. 29.

[7] Address: 615 East 82nd Avenue, Suite 101, Anchorage, Alaska 99518; 907-344-1002.

> an organization mandated under federal law to protect the rights of and advocate for individuals with disabilities, and identified in the Alaska state plan for implementing the IDEA as an integral component of the procedural protection process.

Disability Law Center of Alaska v. Alaska Dept. of Education, Case No. A98-03270-CV (Motion to Alter or Amend at 5-6, Clerk's Docket No. 12). Assuming the accuracy of the foregoing representation, it would appear to the court that the Disability Law Center of Alaska has some sort of formal charge or responsibility for representing persons situated like the plaintiffs. The court is under the impression that the Disability Law Center of Alaska has staff counsel who are admitted to the Alaska Bar Association. The Disability Law Center of Alaska may be an avenue for assistance to the plaintiffs.

In summary, and because the plaintiffs have not appeared by counsel, the court declines to set aside its judgment or reinstate the plaintiffs' complaint, and the foregoing motions are denied. DATED at Anchorage, Alaska, this 13 day of May, 1999.

(s/_____)
H. Russel Holland, Judge
District of Alaska

(Clerk's Service Stamp)

Appendix F

May 18, 1999

Ms. Pam Bickford
16840 Tide View Drive
Anchorage, Alaska 99516

Dear Ms. Bickford:

As we discussed, this letter explains why the Disability Law Center of Alaska is not prepared at this time to represent you in pursuit of your child's rights under the Individuals with Disabilities Education Act (IDEA).

This agency is funded with state and federal grants and while we do take some IDEA cases, we are not able to meet every request for assistance. We are considered a "minimum allotment state" Protection and Advocacy (P & A) system. The few dollars we get are spent after annually reviewing and prioritizing which type of cases we will pursue. This prioritizing is based on public input and forums, conducted periodically, to ask parents and others for their opinions.

Just because we did not choose to represent you does not mean your case is without merit. Out office has IDEA materials to help you or your representative research existing law. If you would like to access these resources, please contact us to schedule some time. Best wishes in your efforts.

Sincerely,
(s/ Rick Tessandore)
Executive Director

Appendix G

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

No. A98- 0408-CV(HRH)

K.B., et al.,
Plaintiffs,
vs.
ANCHORAGE SCHOOL DISTRICT, et al.,
Defendants.

[Filed June 4, 1999]

ORDER

Motion for Clarification and Reconsideration[1]

K.B., et al., all of whom are minors, seek clarification and reconsideration of the court's order of May 14, 1999.[2] Plaintiffs suggest that the court has misstated the date upon which certain earlier motions were filed by them. The court has not misstated that date. Although the plaintiffs' notice of failure to retain counsel (etc.)[3] may have been mailed on May 5, 1999, it was not received and *filed* by the clerk of court until May 10, 1999. This date is of no significance to the court's earlier order.

The plaintiffs' report with respect to their experience with the Disability Law Center of Alaska is indeed disappointing. The court intends to independently follow upon on this situation.

Plaintiffs request clarification as regards whether the court has dismissed their complaint simply on the issue of representation. That is precisely what the court

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1 Clerk's Docket No. 31.
2 Clerk's Docket No. 30.
3 Clerk's Docket No. 27.

said.[4] Subsequently, the court explicitly stated that it would reinstate the complaint, "[i]f moved to do so by counsel for the plaintiffs on or before May 5, 1999 ...."[5] In this regard, the court is very much mindful of the tension which exists between the due process rights of litigants and the availability of counsel. Nevertheless, this court is obligated to follow the directions of the Ninth Circuit Court of Appeals which has held that children, whether suing in their own names or through their parents as guardians *ad litem,* must be represented by counsel. *Johns v. County of San Diego,* 114 F.3d 874 (9th Cir. 1997).

Finally, the court is advised that the parents of the plaintiffs have filed a complaint with the Alaska Department of Education as regards compliance with Section 504 of the Rehabilitation Act and Americans with Disabilities Act. While interesting, that information has no bearing on the status of the minor plaintiffs' complaint in this case, which remains dismissed. With the foregoing clarification, the motion for reconsideration is denied.

DATED at Anchorage, Alaska this 3 day of June, 1999.

(s/_____)
H. Russel Holland, Judge
District of Alaska

(Clerk's Service Stamp)

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[4] Order to dismiss at 3 (Feb 3,1999), Clerk's Docket No. 20.

[5] Order re case status at 2 - 3 (May 8, 1999), Clerk's Docket No.26.

Appendix H

United States District Court
District of Alaska
222 West 7th Avenue - No. 54
Anchorage, Alaska 99513-7545

June 3, 1999

Rick Tessandore, Executive Director
Disability Law Center of Alaska
615 East 82nd Avenue - No. 101
Anchorage, Alaska 99518-158

Re: K.B. v. Anchorage School District
Case No. A98 - 0408 - CV (HRH)

Dear Mr. Tessandore:

A copy of your letter of May 18, 1999, to Pam Bickford has been provided to the court in connection with certain minor plaintiffs' efforts to obtain reinstatement of their complaint against the Anchorage School District in the above-referenced case. I believe you are aware of this situation from talking with Mrs. Bickford. You are probably aware that the reason for dismissal of the minor plaintiffs' complaint was the fact that none were represented by counsel as required by *Johns v. County of San Diego*, 114 F.3d 874 (9th Cir. 1997).

The court became aware of your organization only as a consequence of its appearance as the named plaintiff in *Disability Law Center of Alaska v. Alaska Department of Education*, No. A98-032-CV.

The Disability Law Center of Alaska went to great lengths to convince the court of the standing of that organization to sue in its own name under the Individuals with Disabilities Education Act. It is a substantial disappointment to learn now that the

assistance of that organization is apparently not available to a group of minor plaintiffs who may have no recourse whatever to the court without the assistance of licensed counsel. The court would suppose that there would be economies of scale in representing a substantial number of plaintiffs in a matter such as this. The court would also suppose that the parents of these children, while perhaps unable to afford the full costs of counsel, might well be in a position to contribute to the Disability Law Center. Moreover, the court knows from past experience that Mrs. Bickford has devoted a very substantial amount of time and effort to understanding the IDEA. Because there was no objection, she represented her child in one matter before this court, and acquitted herself quite well. In the estimate of the court, she is in a position to provide substantial paralegal assistance; but all of these people need someone with a license to practice to take responsibility for this litigation as regards the minor plaintiffs and to provide professional supervision and interface with the court.

Please reconsider your decision not to assist in this case.

Sincerely,
(s/ H. Russel Holland)
encl.
cc: Mrs. Pamela Bickford
Howard S. Trickey, Esq.
Thomas H. Dahl, Esq.

Appendix I

June 10, 1999

Hon. H. Russel Holland
District Court Judge
United States District Court,
District of Alaska
222 West 7th Avenue, No. 54
Anchorage, AK 99513-7545

Re: K.B. v. Anchorage School District
No. A98-0408 CV (HRH)

Dear Judge Holland:

Thank you for your letter dated June 3, 1999, received on June 7, 1999. I have reviewed this matter with our staff attorneys as well as some information regarding our past relations with Ms. Bickford. I have directed my staff to look again at the issues raised in the Complaint filed in the above-referenced action.

Due to scheduled staff absences during the summer, as well as other constraining circumstances, we will need until approximately October 1 to analyze the merits of the most salient issues raised in the Complaint. Obtaining and reviewing school and related records, as well assessment of potential defenses, the appropriateness of the forum and the remedies sought in the Complaint, will take some time.

We also have learned that the State of Alaska, Department of Education, has scheduled a meeting for September 1999 to discuss Alaska standards on assessment of eligibility for students with learning disabilities. There is at least the potential that the outcome of this meeting and other interactions with the State may substantially moot at least some of the prospective relief sought under the Complaint and obviate the need to sue the court's resources.

I will let you and counsel for other named defendants know in Early October whether, after further analysis, we can agree to represent any of the twelve plaintiffs identified in the Complaint, either individually or as representatives of a class of persons. If legal action is necessary before October 1, we continue as we always have to make our legal library available to persons with disabilities and their representatives, and to provide technical assistance to another attorney, should one be retained by any of the parties in this matter.

In the meantime, please do not hesitate to inform us if there are other ways that the Disability Law Center may be of service to persons with disabilities before the federal court.

Very truly yours,
(s/ Rick Tessandore)
Executive Director

Cc:
Mrs. Pamela Bickford
Howard S. Trickey, Esq.
Thomas H. Dahl, Esq.
Steve Essley, DLC - Anchorage
Robert Briggs, DLC - Juneau

Appendix J

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA
No. A98-0408-CV(HRH)

K.B., et al.,
Plaintiffs,
vs.
ANCHORAGE SCHOOL DISTRICT, et al.,
Defendants.

[Filed June 17, 1999]

ORDER

Motion for Reconsideration[1]

Pamela Bickford, mother of K.B., a minor plaintiff in this case, again moves for reconsideration of the court's dismissal of the complaint in this case.[2]

The court admires Mrs. Bickford's persistence and determination in aid of her children and those similarly situated, but the fact remains that Mrs. Bickford does not have the capacity to act as attorney for the minor plaintiffs. The court has already dismissed the plaintiffs' complaint. There is nothing to "stay".

The court understood in a general fashion, that the passage of time can affect the rights of parties even when dismissals are without prejudice. It is the court's experience that most people, lawyers in particular, habitually work to deadlines; and that, without deadlines, problems tend to languish. The instant motion for reconsideration is denied.

DATED at Anchorage, Alaska, this 17 day of June, 1999.

(s/_____)
H. Russel Holland, Judge
District of Alaska

(Clerk's Service Stamp)

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1 Clerk's Docket No. 33.

2 Clerk's Docket No. 30.

Appendix K

(Letterhead of the State of Alaska Department of Law Office of the Attorney General)

November 17, 1998

Ms. Pamela Bickford
16840 Tide View Drive
Anchorage, Alaska 99516

Re: Kenneth B., et. al. v. Anchorage School District, et. al. Our File No: 663-98-0085

Dear Ms. Bickford:

I am the Assistant Attorney General assigned to represent the State Board of Education and Commissioner Shirley J. Holloway. Your Complaint and Request for Due Process Hearing has been referred to me. I have also received a copy of Robyn Rehmann's letter to you.

Ms. Rehmann has indicated that the Anchorage School District has agreed to accept your complaint and assign it to a hearing officer. I am returning your complaint to you because of several procedural problems that it presents.

1. **The Caption.** You have named several persons who are bringing this action. Some you have said to be children entitled to special education and related services. You are bringing the action by their parents on their own behalf, on behalf of the children, and on behalf of a class of unnamed persons.

I have checked with the Alaska Bar Association and have learned that you are not an attorney. You have, therefore, no right to bring any action on behalf of anyone other than yourself. You also have no legal authority to bring an action on behalf of a class. Although several persons are named at the end of the complaint and you allege that the named parents are bringing the action on their own behalf, you are the only person who has signed the complaint. Complaints

must be signed by the person bringing the complaint or by their attorney. See, for example, Rule 11, Alaska Rules of Civil Procedure. Alaska Bar Rule 63(b) defines "practice of law" to include submission of pleadings on behalf of another before a court or a governmental body operating in its adjudicative capacity. Practicing law without a license is a misdemeanor under AS 08.08.230. I am returning the complaint to you because I assume that you filed it in good faith, and did not know the legal effect of your actions.

2. **The Court.** You have not identified the court to which the complaint is being presented. I assume by the title of the document that it is a complaint brought either under 34 C.F.R. § 300.506 or 4 AAC 52.500. Yet you cite in paragraph 12 several references to federal law, and you ask for declaratory and injunctive relief under Rule 57 of the Federal Rules of Civil Procedure. A hearing officer in a due process hearing cannot grant declaratory or injunctive relief.

If this is a complaint under the provisions of IDEA it must be initiated "on any of the matters described in 34 C.F.R. § 300.504(a)(1) and (2)." 34 C.F.R. § 506(a). If this is a complaint under state regulations, specifically 4 AAC 52.500, please restate the claim on behalf of your child and yourself alone, and ask for the state to investigate the complaint as provided in the regulation. If this is, in fact, a complaint in the U. S. District Court for declaratory and injunctive relief, please name the court at the head of the document and restate your jurisdiction paragraph to identify with clarity the federal question you are presenting.

3. **The Claims against the State.** You, of course, have a right to sue any state entity, including the State Board of Education and the Department of Education, for redress of any wrongs that you can claim they have committed against you or your child. If you claim that this complaint is intended to do that, you must identify the court in which the action is to be brought. Neither

state nor federal procedure will allow you to go directly to court in a dispute against an administrative agency like a school district. The law requires that all administrative remedies must first be exhausted before the court has jurisdiction to hear the lawsuit.

But if this is a complaint for a due process hearing under 34 C.F.R. § 300.506, the proper defendant is the district that is responsible for delivering special education or related services. The state, as State Educational Agency (SEA) is not a proper defendant but the agency to which an appeal may be brought by "any party aggrieved by the findings and decisions in the hearing." 34 C.F.R. § 300.510. Similarly, if the complaint is brought under state regulations, the proper defendant is the district under 4 AAC 52.550 and the Department of Education, Office of Special Services is the agency to which any party may bring an appeal. 4 AAC 52.570.

In summary, we have read the complaint and we do not know what you mean to do with it. We will assume that you intend to go forward with your dispute against the Anchorage School District. The state, as the agency to which appeals will be brought, is not properly involved at this stage of the proceeding. We will do nothing further in this matter unless and until you have clarified your intentions.

Sincerely,
BRUCE M. BOTELHO
ATTORNEY GENERAL
By: (s/ Thomas H. Dahl)
Assistant Attorney General

Enclosure
cc: Shirley J. Holloway, Commissioner
Department of Education
DiAnn Brown, State Director, Special
Education, Department of Education
Robyn Rehmann, Executive Director, Special
Education, Anchorage School District

Appendix L

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAMELA BICKFORD., et al., Plaintiffs-Appellants vs. ANCHORAGE SCHOOL DISTRICT BOARD OF EDUCATION, et al., Defendants-Appellees.	No. 99-35730 DC # CV-98-00408-HRH District of Alaska **ORDER**

[Filed April 5, 2000]

Before: GOODWIN, LEAVY, and TASHIMA, Circuit Judges

The panel has voted to deny appellants' petition for panel rehearing. Judge Tashima has voted to deny appellants' petition for rehearing en banc and Judges Goodwin and Leavy so recommend.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed.R.App.P. 35.

The petition for rehearing and rehearing en banc is denied.

No further filings will be accepted in this closed appeal.

Appendix M

Alaska Statutes:

AS 08.08.230. Unlawful practice a misdemeanor.

(a) A person not an active member of the Alaska Bar and not licensed to practice law in Alaska who engages in the practice of law or holds out as entitled to engage in the practice of law as that term is defined in the Alaska Bar Rules, or an active member of the Alaska Bar who willfully employs such a person knowing that the person is engaging in the practice of law or holding out as entitled to so engage is guilty of a class A misdemeanor.

Federal Statutes:

20 U.S.C. § 1415. PROCEDURAL SAFEGUARDS.

(a) ESTABLISHMENT OF PROCEDURES. - Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies.

(b) TYPES OF PROCEDURES. - The procedures required by this section shall include -

(1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;

(2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;

(3) written prior notice to the parents of the child whenever such agency -

(A) proposes to initiate or change; or

(B) refuses to initiate or change;

the identification, evaluation, or educational placement of the child, in accordance with subsection (c) of this section, or the provision of a free appropriate public education to the child;

(4) procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;

(5) an opportunity for mediation in accordance with subsection (e) of this section;

(6)an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child;

(7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential) -

(A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and

(B) that shall include -

(i) the name of the child, the address of the residence of the child, and the name of the school the child is attending;

(ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and

(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and

(8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7).

(c) CONTENT OF PRIOR WRITTEN NOTICE. The notice required by subsection (b)(3) of this section shall include -

(1) a description of the action proposed or refused by the agency;

(2) an explanation of why the agency proposes or refuses to take the action;

(3) a description of any other options that the agency considered and the reasons why those options were rejected;

(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) a description of any other factors that are relevant to the agency's proposal or refusal;

(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this subchapter and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) sources for parents to contact to obtain assistance in understanding the provisions of this subchapter.

(d) PROCEDURAL SAFEGUARDS NOTICE. -

(1) In general. A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum -

(A) upon initial referral for evaluation;

(B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and

(C) upon registration of a complaint under subsection (b)(6) of this section.

(2) Contents. The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to

(A) independent educational evaluation;

(B) prior written notice;

(C) parental consent;

(D) access to educational records;

(E) opportunity to present complaints;

(F) the child's placement during pendency of due process proceedings;

(G) procedures for students who are subject to placement in an interim alternative educational setting;

(H) requirements for unilateral placement by parents of children in private schools at public expense;

(I) mediation;

(J) due process hearings, including requirements for disclosure of evaluation results and recommendations;

(K) State-level appeals (if applicable in that State);

(L) civil actions; and

(M) attorneys' fees.

(e) MEDIATION. -

(1) In general. - Any State educational agency or local educational agency that receives assistance under this subchapter shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) of this section to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k) of this section.

(2) Requirements. - Such procedures shall meet the following requirements:

(A) The procedures shall ensure that the mediation process -

(i) is voluntary on the part of the parties;

(ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f) of this section, or to deny any other rights afforded under this subchapter; and

(iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with -

(i) a parent training and information center or community parent resource center in the State established under section 1482 or 1483 of this title; or

(ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents.

(C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B).

(E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

(G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(f) IMPARTIAL DUE PROCESS HEARING. -

(1) In general. Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency.

(2) Disclosure of evaluations and recommendations.

(A) In general. At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(B) Failure to disclose. A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) Limitation on conduct of hearing. - A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.

(g) APPEAL. - If the hearing required by subsection (f) of this section is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.

(h) SAFEGUARDS. - Any party to a hearing conducted pursuant to subsection (f) or (k) of this section, or an appeal conducted pursuant to subsection (g) of this section, shall be accorded -

(1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and

(4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 1417(c) of this title (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 1412(a)(21) of this title).

(i) ADMINISTRATIVE PROCEDURES. -

(1) In general. -

(A) Decision made in hearing. - A decision made in a hearing conducted pursuant to subsection (f) or (k) of this section shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) of this section and paragraph (2) of this subsection.

(B) Decision made at appeal. - A decision made under subsection (g) of this section shall be final, except that any party may bring an action under paragraph (2) of this subsection.

(2) Right to bring civil action. -

(A) In general. - Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) Additional requirements. - In any action brought under this paragraph, the court -

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

(3) Jurisdiction of district courts; attorneys' fees. -

(A) In general. - The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy.

(B) Award of attorneys' fees. - In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(C) Determination of amount of attorneys' fees. Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.

(D) Prohibition of attorneys' fees and related costs for certain services

(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if -

(I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;

(II) the offer is not accepted within 10 days; and

(III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) of this section that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section.

(E) Exception to prohibition on attorneys' fees and related costs. - Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(F) Reduction in amount of attorneys' fees. - Except as provided in subparagraph (G), whenever the court finds that

(i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7) of this section; the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section.

(G) Exception to reduction in amount of attorneys' fees. The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.

* * *

(l) RULE OF CONSTRUCTION. - Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

(1) In general. - A State that receives amounts from a grant under this subchapter may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law) -

(A) the public agency shall provide any notice required by this section to both the individual and the parents;

(B) all other rights accorded to parents under this subchapter transfer to the child;

(C) the agency shall notify the individual and the parents of the transfer of rights; and

(D) all rights accorded to parents under this subchapter transfer to children who are incarcerated

in an adult or juvenile Federal, State, or local correctional institution.

(2) Special rule. - If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

-SOURCE- (Pub. L. 91-230, title VI, Sec. 615, as added Pub. L. 105-17, title I, Sec. 101, June 4, 1997, 111 Stat. 88.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (i)(3)(D)(i)(I), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure. The Controlled Substances Act, referred to in subsec. (k)(10)(B)(ii), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (Sec. 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables. The Americans with Disabilities Act of 1990, referred to in subsec. (l), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, as amended, which is classified principally to chapter 126 (Sec. 12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables. The Rehabilitation Act of 1973, referred to in subsec. (l), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Act is classified generally to subchapter V (Sec. 790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

28 U.S.C. § 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, Sec. 91, 63 Stat. 103.)